



GENDER JUSTICE VS. RELIGIOUS LAW: THE CONSTITUTIONAL DEBATE ON ISLAMIC INHERITANCE VIA THE CASE OF SAFIYA PM

Suhaani Sharma*

ABSTRACT

The article discusses the gap that exists in India between Islamic inheritance laws and gender equity. It revolves around the case of Safiya PM, a Muslim woman who rejected Islam and so forfeited her fortune. Fairness and equality for all are ensured by the Indian Constitution. But when it comes to inheritance, Muslim Personal Law continues to treat women unfairly. As an illustration, widows have few rights, converts like Safiya have no inheritance rights, and sons receive twice as much as daughters. Articles 14, 15, and 21 of the Constitution protect equality and dignity, which have been breached by this. The article explains how this leads to a legal conflict between constitutional rights and religious freedom. Since it decides whether courts will defend equality or religious regulations, Safiya's case is crucial. The article also compares India with other nations whose laws have been amended to provide women equal rights to inherit. It suggests that India's laws need to be updated. This should be achieved by establishing a balance between the need to defend women's rights and respect for religion. It is to ensure that every woman has equal rights and dignity in accordance with India's secularism and Constitution.

Keywords: Gender justice, Islamic inheritance, Gender inequality, Constitutional rights.

INTRODUCTION

“Accept my command and be kind to women. Indeed, they are made from ribs, and the uppermost rib bone is the most curved. If you attempt to straighten it, it will break, whereas if you do nothing, it will remain crooked. Accept my directive and be kind to women.”¹

*BBA LLB, THIRD YEAR, INDIAN INSTITUTE OF MANAGEMENT, ROHTAK.

¹ “Ustaz Abdul Rahman Rahumi, “How Prophet Muhammad ﷺ Taught the World the True Value of Women” *Muslim Pro* (2022).”

India has a diverse mix of ethnicities and religions, and it affirms multiple essential rights in Part III of the Constitution, where all individuals, without regard for gender, class, religion, or race, will have an opportunity for full development. Though the Indian constitution confers equal rights and chances for women, and numerous liberal laws recognise this entitlement, the constitution still treats women differently in multiple instances. This is especially true of inheritance laws and divorce and maintenance laws. A public discussion about removing legal constructs denigrating women has focused on the demand for a uniform civil code. This demand has been supported by Hindu religious leaders and vehemently opposed by Muslim and Christian religious leaders.

In reality, nearly all personal laws, whether Hindu, Muslim, or Parsi, discriminate against women. In principle, women are constitutionally assured the fundamental property right. In practice, the constitution's liberal character is thus offset by a parallel personal law framework which limits women's inheritance, protection, and maintenance rights. Cases like Safiya PM's, a Muslim woman who has been disinherited due to apostasy, highlight this tension, exposing how religious laws undermine constitutional mandates. This conflict raises an urgent question: How does the gender disparity in Islamic inheritance law, particularly in cases like Safiya's, stand against India's constitutional principles of gender justice?

ISLAMIC INHERITANCE LAW: A SYSTEM OF GENDER HIERARCHY

Islamic inheritance rights have been codified under the Muslim Personal Law (Shariat) Application Act 1937 and are, therefore, institutionalised through the following particular means of gender disparity:

The 2:1 Rule: Under both Sunni and Shia law, the daughter is a primary heir; her right of inheritance is never denied, nor does she ever share in the estate of a parent. So, sons inherit twice the share of daughters (e.g., if a man dies leaving one son and one daughter, the son receives 2/3 of the estate, the daughter 1/3).

Widows' Limited Rights: About the share of a widow, she receives 1/8th of her husband's estate if children exist and 1/4th if there are none.

Exclusion of daughters from Inheritance: In some schools of Islamic law, daughters can be excluded if male heirs (e.g., brothers, uncles) are present.

Apostasy penalties: Apostates, like Safiya PM, lose inheritance rights entirely under Sharia, regardless of their financial needs.

These rules stem from a 7th-century framework where men were deemed sole breadwinners. This is also the justification Shariah Law preachers use, stating that the only cause of such inheritance is so that women can sustain themselves if any tragedy befalls them; other than men are the ones who require property to provide for the family. However, in modern India, women contribute equally to household incomes, rendering this rationale obsolete.

As the Constitution came into force in 1950, there has been debate over Muslim women's inheritance rights under the Muslim Personal Law. Islam, as revealed to the Prophet Mohammed, does not oppress women. However, it has been influenced by men in how it has been applied to family law and daily life. The traditional interpretations of Shariah, which also contain gender-selective customs, are attributed to the absolute words of God and are the reason behind the subjugation of Muslim women in practice. Muslim feminists claim that Shariah, a misreading of God's word, is the root cause of women's oppression.²

CONSTITUTIONAL PRINCIPLES UNDER THREAT

Law was seen as the main vehicle of social change in post-colonial societies, and as such, the Constitution includes ideas of universal human rights and equality.³ The makers of the Constitution were aware of many discriminatory practices, as well as the male-centric society and how it operated in favour of men's rights over women's rights. Because of this, there was a need to include some general and explicit provisions for the protection and betterment of women. But Islamic inheritance laws are in direct contradiction to those general rights.

Article 14: Equality Before Law: Courts have repeatedly emphasised that equality is a "basic feature" of the Constitution, which the 2:1 rule violates. In *Shayara Bano v. Union of India*,⁴ the Supreme Court struck down instant triple talaq. It held that it violated fundamental rights

² "Melanie P. Mejia, "Gender Jihad: Muslim Women, Islamic Jurisprudence, and Women's Rights"" 1 *Kritike* 1-24 (June 2007)."

³ "Vrinda Narain, "Reclaiming the Nation: Muslim Women and the Law in India" 1 *University of Toronto Press* 103 (2008)."

⁴ "*Shayara Bano v. Union of India*, AIR 2017 SUPREME COURT 4609."

under Article 14, Article 15, and Article 21 of the Indian Constitution, noting that personal laws must comply with constitutional morality. Similarly, unequal inheritance shares sustain systemic discrimination, reducing women's agency and reinforcing patriarchal norms.

The Court explicitly noted that legislative measures should be routinely reviewed to ensure they do not perpetuate gender discrimination. This suggests that personal laws should adapt to contemporary understandings of gender justice.⁵

Article 15: Prohibition of Gender Discrimination: Article 15 explicitly bars discrimination based on sex. However, Muslim personal law operates as a "protected sphere" under Article 25 (right to religion), creating a legal paradox. The judiciary has grappled with this conflict: In *Danial Latifi v. Union of India*,⁶ the Court interpreted Muslim maintenance laws expansively to ensure divorced women's dignity, demonstrating that religious laws can be reconciled with constitutional values.

In *Ahmedabad Women's Action Group v. Union of India*,⁷ petitioners argued that discriminatory personal laws violate Article 15, but the Court deferred to legislative authority, emphasising the need for parliamentary intervention. The Safiya PM case reignites this debate, challenging whether gender-based religious exemptions can override constitutional rights.

Article 21: Right to Life with Dignity: Economic disempowerment directly impacts dignity. Muslim women, already marginalised by inheritance laws, face compounded vulnerabilities, including financial dependence and apostasy penalties. Safiya's disinheritance from leaving Islam strips her of autonomy and financial security, leaving her destitute. Previously, Indian courts have interpreted Article 21 to include the means of livelihood and economic rights (*Olga Tellis v. Bombay Municipal Corporation*),⁸ making such penalties unconstitutional.

This principle can also be observed in the *Mohd. Ahmed Khan vs. Shah Bano Begum*,⁹ where the Supreme Court ruled that a divorced Muslim woman's right to maintenance was essential for her economic survival and dignity. These cases collectively expanded the interpretation of

⁵ "Ratna Kapur. 'Gender and the "Faith" in Law: Equality, Secularism and the rise of the Hindu Nation'. *Journal of Law and Religion* 35 (3), 407-431, (2020)."

⁶ "*Danial Latifi v. Union of India*, AIR 2001 SUPREME COURT 3958."

⁷ "*Ahmedabad Women's Action Group v. Union of India*, AIR 1997 SUPREME COURT 3614."

⁸ "*Olga Tellis v. Bombay Municipal Corporation*, 1986 AIR 180."

⁹ "*Mohd. Ahmed Khan v. Shah Bano Begum*, 1985 AIR 945."

Article 21 to include socio-economic rights, bridging the gap between the dominant and vulnerable individuals.

THE SAFIYA PM CASE: A CONSTITUTIONAL LITMUS TEST

Safiya PM's case serves as a constitutional crucible, testing whether the judiciary will prioritise the sentiments attached to religious doctrines or uphold its commitment to foundational constitutional principles. Speaking on behalf of Safiya, attorney Prashant Padmanabhan cited the core secularist tenet in Article 25 that "allows each individual the fullest liberty to believe or not to believe and treats all religions on an even platform."

The Supreme Court previously, in *Sarla Mudgal v. Union of India*,¹⁰ ruled that religious conversion cannot override statutory rights standing under Article 25. Safiya's case could extend this logic to inheritance, asserting that constitutional rights supersede religious mandates, which can be incorporated smoothly since, by the Essential Religious Practice (ERP) test, inheritance in this particular context does not fall under the category of an ERP, which will be discussed further in this paper. Furthermore, in *Mitar Sen v Maqbul Rasan Khan*,¹¹ the Privy Council held that when a person changes his religion, his laws change, and the new law governs him and his children alike.

Safiyas' petition pleaded that the reason why the petitioner is not following the tenets of Islam is the discriminatory practices of Sharia Law. As a Muslim woman, primarily, she was only allowed to inherit half the share of the male heirs, but as an apostate, she was denied even that reduced share. "It will be a failure of justice if the petitioner is to be governed by Sharia law, even if she officially leaves the religion," said her attorney. The petition underscored that even if she received a formal certificate from an authority stating that she was not religious or caste-related, she would still have no way to inherit the property due to the legal void in the statute, which can be plugged by judicial interpretation."

In this manner, the dichotomy between public and private spheres supports the religious-secular binary in Canada. The state is committed to a secular approach to the public sphere and states that it does not interfere with religious laws in the private sphere, even when there are conflicts

¹⁰ "Sarla Mudgal v. Union of India, 1995 AIR 1531."

¹¹ "Mitar Sen v. Maqbul Rasan Khan, AIR 1930 PC 251."

with constitutional principles and guarantees.¹² This is especially true for Muslim women, who experience both inclusion and exclusion from equal citizenship because the state's guarantee of equality does not extend to the private family sphere. The state does not interfere with the rights of Muslim groups as part of its multiculturalism. This has created differentiated citizenship, which privileges its obligations and duties to citizens based on gender and religious identities.

COMPARATIVE PERSPECTIVES: GLOBAL REFORMS VS. INDIAN STAGNATION

Several nations where Muslims make up the majority of the population have modified their inheritance laws to be compliant with gender equality specifications, such as Tunisia, which abolished the 2:1 rule for inheritance rights in 2018, resulting in equal inheritance rights, or Turkey, which adopted a secular civil code in 1926, providing for equal inheritance rights. In contrast, India appears to be falling behind. Jayna Kothari has argued that the Supreme Court has "cherry-picked" the battles it has engaged in to provide gender equality judgments that are seen as progressive. The Court has readily decided the question of women's equality in cases where it believes there is no real tension between pursuing gender equality and being compliant with the status quo. A prime example is *Independent Thought v. Union of India*, where the Supreme Court read down the marital rape exception that previously existed in section 377 of the Indian Penal Code, 1860.

On the other hand, when faced with claims seeking gender equality and which actually statutorily suspends an individual's fundamental right (such as the right to religious practice), the Supreme Court will not engage with the question of gender equality, such as what occurred in *Shayara Bano v. Union of India* where the Supreme Court found that Triple Talaq was unconstitutional based on its faith and not from a gender equality viewpoint. The same can be seen in the *Sabarimala* judgment.¹³

Catherine MacKinnon has made similar observations. She notes that in decisions involving cases relating to personal laws, the Court has found reasons to prefer the claims of women beyond gender equality. The Court uses technical reasoning and other interpretive tools to issue progress-favouring rulings, but does not allow the idea of equality to interfere with its thinking.

¹² "Vrinda Narain, "Reclaiming the Nation: Muslim Women and the Law in India" 1 *University of Toronto Press* 78, 93, 97 (2008)."

¹³ "Jayna Kothari, "Is the Supreme Court Cherry Picking its Gender Battles?" 181-202 (October 2018)."

MacKinnon tries to make sense of the issue. The Court may wish to avoid disrupting the existing state of law in either its creation or authority; gender equality itself may be conceived as a 'Western and hegemonic idea that does not honour cultural differences.'¹⁴

RECONCILING FAITH AND JUSTICE

The disparity between genders within Islamic inheritance law involves not just the issue of religion but the crisis of constitutionalism. The Saradaman Kandappan vs. S. Rajalakshmi¹⁵ case demonstrates that the battle for gender equality and women's empowerment in India is ongoing. The Supreme Court upheld the constitutional guarantee of equality before the law through its historic decision in this case. It pushed back against established, biased gender norms that have perpetuated injustice and inequality in society.

This case should signal the call to act and advocate to remove structural barriers to women's rights and support inclusive frameworks of law that promote justice, fairness, **and equality for all individuals.** Perhaps by integrating traditional Islamic jurisprudence with present-day judicial rationale, solutions that respect both religious sentiments and contemporary constitutional values can be formulated. Safiya PM's case accentuates the urgent need to prioritise gender justice over archaic traditions.

While religious freedom is sacrosanct, it cannot override fundamental rights. The Supreme Court observed in Justice K.S. Puttaswamy v. Union of India (2017) that dignity is the "core of constitutional morality." India must heed this ethos by reforming discriminatory laws, ensuring that no woman, regardless of faith, is relegated to second-class citizenship. The Constitution demands nothing less.

¹⁴ "Catharine A. MacKinnon, "Sex Equality Under the Constitution of India: Problems, Prospects, and "personal Laws""'. *International Journal of Constitutional Law* 181-202 (April 2006)."

¹⁵ "Saradaman Kandappan v. S. Rajalakshmi, AIR 2011 SUPREME COURT 3234."